

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CALLUM A. MILLER,
Petitioner,

v.

CIVIL ACTION NO.
11-11570-RGS

GARY RODEN,
Superintendent,
Respondent.

ORDER TO ANSWER

September 30, 2011

BOWLER, U.S.M.J.

In accordance with the Rules Governing Section 2254 Cases in the United States District Courts, respondent Gary Roden ("respondent") is hereby **ORDERED** to file an answer to the petition in the above-styled action within 20 days after receipt of this Order, exclusive of the day of receipt.

The answer must include a statement notifying this court of the existence of any victim or victims as defined by 18 U.S.C. § 3771. Pursuant to Rule 4, a copy of the petition and the civil cover sheet shall be served on respondent and the Attorney General for the Commonwealth of Massachusetts by certified mail. The deadline for filing a dispositive motion or memorandum in opposition to the petition is **October 31, 2011**.

In the event respondent wishes to raise an exhaustion defense in any dispositive motion or memorandum in opposition to the petition, respondent is also directed to brief the merits of all the claims inasmuch as this court has the discretion under 28 U.S.C. § 2254(b) (2) to deny an application on the merits notwithstanding a petitioner's failure to exhaust available state court remedies. Respondent should file all necessary state court records. In the event respondent argues that one or more claims fails on the merits under section 2254(d) or under a de novo standard of review, see Fortini, III v. Murphy, 257 F.3d 39, 47 (1st Cir. 2001), respondent is instructed to file the state court transcripts of the trial. Respondent is also advised to file the trial transcripts in the event respondent's argument[s] implicate or inevitably lead to a cause and prejudice or miscarriage of justice analysis.

/s/ Marianne B. Bowler
MARIANNE B. BOWLER
United States Magistrate Judge